

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KATHRYN BURGAN,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 3:15-cv-4081
	§	
KROGER TEXAS, L.P.,	§	JURY DEMANDED
<i>Defendant.</i>	§	

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**DEFENDANT’S NOTICE OF REMOVAL**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to the terms and provisions of 28 U.S.C. §§ 1441 and 1446, Defendant Kroger Texas L.P. in the cause styled “Kathryn Borgan v. Kroger Texas, L.P.” originally pending as Cause No. CC-15-05382-A in the County Court at Law No. 1 of Dallas County, Texas, files this Notice of Removal of the cause to the United States District Court for the Northern District of Texas, Dallas Division.

**I.**

The basis of the removal of this action is diversity jurisdiction under 28 U.S.C. § 1332. In particular, diversity jurisdiction exists in this case because there is complete diversity of citizenship between the parties. Kroger is not a citizen of the State of Texas, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.<sup>1</sup>

**II.**

Plaintiff, at the time of the initial filing of this action and at the current time of the removal of this action, was and is a citizen, resident, and domicile of the State of Texas.

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<sup>1</sup> See 28 U.S.C. § 1332 (2012).

**III.**

Defendant Kroger Texas L.P., at the time of the initial filing of this action and at the time of the removal of this action, was and is a limited partnership formed under the laws of Ohio. Kroger Texas L.P. only has one general partner and one limited partner. The general partner is KRGP Inc., an Ohio corporation with its principal place of business in Ohio. The limited partner is KRLP Inc., an Ohio corporation with its principle place of business in Ohio. Neither KRGP Inc. nor KRLP Inc. has ever been a resident of, incorporated in, or had its principal place of business in the State of Texas.

**IV.**

Plaintiff claims that on October 17, 2014, she slipped and fell on water that was on the floor of Kroger's store. Plaintiff filed suit on October 21, 2015, in the County Court at Law No. 1 of Dallas County, Texas, alleging causes of action of negligence and premises defect/liability against Kroger.

**V.**

Plaintiff's claimed damages for medical expenses alone, per her Responses to Defendant's Request for Disclosure dated December 18, 2015, are \$77,357.07.<sup>2</sup> Based on Plaintiff's Responses to Defendant's Request for Disclosure, the amount in controversy in this case exceeds \$75,000.00, exclusive of interest and costs.

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<sup>2</sup> See Plaintiff's Responses to Defendant's Request for Disclosure at p. 3, Response to Request D, attached hereto as Exhibit A.

**VI.**

This removal is timely because it is filed within thirty days after receipt, through service or otherwise, of a copy of the initial pleading, or an amended pleading, motion, order or other paper from which it may first be ascertained the case is one which is or has just become removable.<sup>3</sup> Defendant first became aware this case was removable on or about December 18, 2015, after Plaintiff's Responses to Defendant's Request for Disclosure were served on Defendant. Accordingly, this removal is timely because it is made within thirty days after the receipt by defense counsel of the documents which first demonstrated the case was removable. Moreover, more than one year has not passed since the commencement of the action in state court on October 21, 2015.<sup>4</sup>

**VII.**

Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the county in which the removed action has been pending.

**VIII.**

Kroger filed with the Clerk of the County Court at Law No. 1 of Dallas County, Texas a Notice of Filing Notice of Removal to Federal Court contemporaneously with the filing of this Notice of Removal.

**IX.**

Pursuant to Local Rule 81.1, the following documents are attached:

Exhibit A      Plaintiff's Responses to Defendant's Request for Disclosure;

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<sup>3</sup> 28 U.S.C. § 1446(b).

<sup>4</sup> 28 U.S.C. § 1446(c).

Exhibit B State Court docket sheet (as of 12/28/15);

- (1) Plaintiff's Original Petition with Discovery Attached (filed 10/21/15) with Service of Citation (effectuated on 10/30/15);
- (2) Defendant Kroger Texas L.P.'s Original Answer (filed 11/10/15);  
and
- (3) Plaintiff's First Amended Petition (filed 11/11/15).

Also, a Civil Cover Sheet and Supplemental Civil Cover Sheet are being filed with this Notice. A Certificate of Interested Persons is being filed in conjunction with the Notice of Removal.

**WHEREFORE, PREMISES CONSIDERED,** Defendant respectfully prays that this case be removed to the United States District Court for the Northern District of Texas, Dallas Division.

Respectfully submitted,

/s/ B. Kyle Briscoe

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**B. Kyle Briscoe**

Attorney-in-charge

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record in this cause pursuant to and in accordance with the Federal Rules of Civil Procedure on December 29, 2015.

/s/ B. Kyle Briscoe

B. Kyle Briscoe